

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION**

**ROBERT SALLEY and  
BONITA CUNNINGHAM**

**PLAINTIFFS**

**v.**

**CAUSE NO: 4:18 -CV-66-MPM-JMV**

**WEBSTER COUNTY, MISSISSIPPI, SHERIFF TIM MITCHELL,  
IN HIS OFFICIAL CAPACITY, CHIEF DEPUTY DILLON  
CATES, IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES,  
and DEPUTY BLAKE LOVE, IN HIS INDIVIDUAL AND OFFICIAL  
CAPACITIES**

**DEFENDANTS**

**MOTION TO DISMISS**

**NOW COME DEFENDANTS, WEBSTER COUNTY (Officially), SHERIFF TIM MITCHELL (Officially), DEPUTY DILLON CATES (Officially and Individually), and DEPUTY BLAKE LOVE (Officially and Individually),** by counsel, and respectfully move this Court for a finding of qualified immunity, dismissal and/or judgment on the pleadings, to-wit:

**1) FEDERAL PREMISE:** This lawsuit arises from claims brought on behalf of (Plaintiff Salley) a fugitive with a felony bench warrant for possession of methamphetamine and his female passenger (Plaintiff Cunningham) who allege state and federal claims arising from their felony flight from lawful arrest. It is clear from the face of the Plaintiff's Complaint that Federal Claims are constitutionally deficient. First, Plaintiff Salley's issues of pursuit and excessive force do not survive qualified immunity. Second, there is not a plausible violation of the United States Constitution under the requisite *intent to injure standard* applicable to the passenger claims of Plaintiff Cunningham. Third, both Plaintiffs have failed to plead a plausible official capacity federal claim. Fourth, their Complaint includes duplicate official capacity defendants.

**2) STATE LAW PREMISE:** It is equally clear from the fact of Plaintiffs' Complaint that State Law Claims are subject to multiple reservations of immunity under state law. First, suit was filed within thirty days of the incident, affording no time for the requisite tolling upon notice as provided by *Miss. Code Ann.* §11-46-11. Second, intentional torts are barred as a matter of law. Third, unlawful flight by a wanted felon at speeds exceeding 100 miles per hour is absolutely barred by law enforcement immunity. *Miss. Code Ann.* §11-46-9(1)(c). Fourth, there is but one single MTCA cap among defendants, no right to a jury and no recovery for punitive damages or attorney fees, and there is no joint and several liability applicable to public entity claims under state law.

**3) INJUNCTIVE RELIEF** There simply is no federal jurisdiction to grant Plaintiffs some form of immunity by injunction from future criminal acts.<sup>1</sup>

**4) BRIEFING:** In accord with Uniform Local Rule 7(b), these Defendants are filing their supporting authorities herewith.

**NOW, THEREFORE,** these Defendants respectfully move this Court to dismiss the instant Complaint with prejudice pursuant to Rule 12(b)(1)(2)(6) & (c), *Fed. R. Civ. Proc.*

**FILED** this the 16<sup>th</sup> day of April, 2018.

**JACKS | GRIFFITH | LUCIANO, P.A.**

By: /s/ Daniel J. Griffith  
Daniel J. Griffith, MS Bar No. 8366  
Attorney for Defendants

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<sup>1</sup> *Younger abstention* is appropriate “where absent bad faith, harassment, or a patently invalid state statute, federal jurisdiction has been invoked for the purpose of restraining state criminal proceedings.” *Ibarra v. Bexar County Hospital Dist.*, 624 F.2d 44, (5<sup>th</sup> Cir. 1980)(emphasis added)(citing *Colorado River Water Conservation District v. United States*, 424 U.S. at 816, 96 S. Ct. at 1245; see *Younger v. Harris*, 401 U.S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971)). See also: *Perez v. Ledesma*, 401 U.S. 82, 85, 27 L. Ed. 2d 701, 91 S. Ct. 674 (1971); and, *Kugler v. Helfant*, 421 U.S. 117, 124-25, 44 L. Ed. 2d 15, 95 S. Ct. 1524 (1975)).

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**CERTIFICATE OF SERVICE**

I, Daniel J. Griffith, attorney of record for Defendants do hereby certify that I have this day caused a true and correct copy of the above and foregoing *Motion to Dismiss* to be delivered by the ECF Filing System which gave notice to all counsel of record who have appeared herein.

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**DATED** this 16<sup>th</sup> day of April, 2018.

/s/ **Daniel J. Griffith**

Daniel J. Griffith